

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

AIR-CONDITIONING, HEATING,  
AND REFRIGERATION  
INSTITUTE, et al.,

Petitioners,

v.

UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY, et al.,

Respondents.

No. 21-1082  
(c/w Nos. 21-1196 &  
22-1062)

**UNOPPOSED MOTION TO GOVERN**

Respondents, the United States Environmental Protection Agency and Michael Regan, in his official capacity as Administrator of the United States Environmental Protection Agency (collectively “EPA”), after conferring with Petitioners, the Air-Conditioning, Heating, and Refrigeration Institute, the Association of Home Appliance Manufacturers, the Consumer Technology Association, the National Association of Manufacturers, and the National Electrical Manufacturers Association, move this Court to remove these consolidated cases from abeyance and establish deadlines for EPA to file the certified index to the administrative records for the challenged final agency

actions; for Petitioners to file their opening (proof) brief using the deferred (joint) appendix approach; for EPA to file its answering (proof) brief; and for Petitioners to file their optional rely (proof) brief. The parties agree to follow the joint appendix approach (as just noted), and therefore the Court can also establish deadlines for Petitioners to file the joint appendix, and for the parties to file their final briefs.

EPA notes that it would ordinarily prefer to continue to hold these cases in abeyance as it continues to progress toward a relevant final agency action. In late 2023, EPA signed a proposed rulemaking under the Toxic Substances Control Act (“TSCA”), 15 U.S.C. §§ 2601 et seq., with respect to PIP (3:1), i.e., phenol, isopropylated phosphate (3:1). *See* 88 Fed. Reg. 82287 (Nov. 24, 2023). Public comments were due January 8, 2024. *Id.* at 82287. Currently, subject to Office of Management and Budget (“OMB”) review, EPA expects this review to conclude by the end of October 2024. EPA will work expeditiously to publish the final rule upon completion of OMB review. As EPA has previously reported to the Court, such final action could obviate the need for further proceedings here or refine the questions presented.

Petitioners at this time do not consent to a further abeyance period, and therefore EPA has elected to file this unopposed motion to govern. The parties

reserve their right to seek appropriate relief, such as a further abeyance period or adjustments to the briefing schedule, respecting future events.

Respectfully submitted,

TODD KIM  
Assistant Attorney General

Dated: September 18, 2024

/s/ *Andrew J. Doyle* \_\_\_\_\_  
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### **CERTIFICATE OF COMPLIANCE**

This motion complies with the word limit imposed by Fed. R. App. P. 27(d) because it contains no more than 477 words. In addition, the motion has been prepared in a proportionally spaced typeface using Word 2013 in Times Roman Number 14.

\_\_\_\_/s/ *Andrew J. Doyle* \_\_\_\_\_